

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NYLES LAWAYNE WATSON,

Plaintiff,

No. CIV S-02-1777 DFL PAN P

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER

_____/

Plaintiff is a prisoner who is proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

By order filed September 17, 2003, the court ordered plaintiff to provide additional information in order to serve process on defendant Johnson. On December 15, 2003, plaintiff filed a request for extension of time to comply with that order and a request for discovery. Neither request was ruled on. On August 17, 2005, the court ordered plaintiff to show cause in writing why his claim against defendant Johnson should not be dismissed pursuant to Fed. R. Civ. P. 4(m). Plaintiff timely responded to that order, and on September 13, 2005, the court discharged the August 17, 2005 order to show cause and directed plaintiff to show cause in writing why, in view of findings made in findings and recommendations recommending summary judgment for three other defendants his claim against defendant Johnson should not be

1 dismissed for failure to state a claim on which relief may be granted. Plaintiff has timely
2 responded to the September 13, 2005 order to show cause.

3 After review of the record herein, and good cause appearing, the September 13,
4 2005 order to show cause will be discharged. Plaintiff will be given one additional period of
5 thirty days in which to provide information necessary to serve process on defendant Johnson.
6 Plaintiff is cautioned that failure to comply with this order will result in a recommendation that
7 his claim against defendant Johnson be dismissed pursuant to Fed. R. Civ. P. 4(m).

8 On September 28, 2005, plaintiff filed a motion for appointment of counsel. The
9 United States Supreme Court has ruled that district courts lack authority to require counsel to
10 represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296,
11 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance
12 of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
13 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
14 court does not find the required exceptional circumstances. Plaintiff's motion for the
15 appointment of counsel will therefore be denied.

16 On September 28, 2005, plaintiff filed a notice of interlocutory appeal and a
17 petition for issuance of a certificate of appealability. A certificate of appealability is not required
18 in this civil rights action pursuant to 42 U.S.C. § 1983. On December 2, 2005, plaintiff filed two
19 requests related to his then pending appeal. On December 14, 2005, plaintiff's appeal was
20 dismissed for lack of jurisdiction. For these reasons, the September 28, 2005 petition for a
21 certificate of appealability and the December 2, 2005 requests will be denied.

22 In accordance with the above, IT IS HEREBY ORDERED that:

- 23 1. The court's September 13, 2005 order to show cause is discharged.
24 2. The Clerk of the Court is directed to send to plaintiff one USM-285 forms,
25 along with an instruction sheet and a copy of the third amended complaint filed January 14, 2003.

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1 3. Within thirty days from the date of this order, plaintiff shall complete and
2 submit the attached Notice of Submission of Documents to the court, with the following
3 documents:

- 4 a. One completed USM-285 form for defendant Dr. Johnson;
5 b. Two copies of the endorsed third amended complaint filed January 14,
6 2003; and
7 c. One completed summons form.

8 4. No extensions of time to provide the material required by paragraph 3 of this
9 order will be granted for any reason.

10 5. Plaintiff's September 28, 2005 motion for appointment of counsel is denied.

11 6. Plaintiff's September 28, 2005 petition for issuance of a certificate of
12 appealability is denied.

13 7. Plaintiff's December 2, 2005 requests are denied.

14 DATED: March 15, 2006.

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17 UNITED STATES MAGISTRATE JUDGE
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NYLES LAWAYNE WATSON,

Plaintiff,

No. CIV S-02-1777 DFL JFM P

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

NOTICE OF SUBMISSION

OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Third Amended Complaint

DATED:

Plaintiff